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WIZARDS OF THE COAST LLC

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 ADAM SHAW, PETER GOLIGHTLY,
12 JUSTIN TURNER, and JOSHUA
STANSFIELD, as individuals and on
13 behalf of others similarly situated and
the general public,

14 Plaintiffs,

15 vs.

16 WIZARDS OF THE COAST LLC,
17 Defendant.

Case No. 5:16-cv-01924-EJD

**DECLARATION OF HÉLÈNE
BERGEOT IN SUPPORT OF
WIZARDS OF THE COAST LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR CONDITIONAL
CERTIFICATION**

Complaint Filed: April 12, 2016
Trial Date: None

DECLARATION OF HÉLÈNE BERGEOT

I, Hélène Bergeot, declare and state as follows:

1. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would testify competently thereto. I am over the age of 18. Unless otherwise noted, the facts set forth herein have been true and correct from as early as October 29, 2011 through the date of my execution of this declaration.

Background and Experience With Wizards and *Magic*

2. I have been employed by WIZARDS OF THE COAST LLC (“Wizards” or the “Company”) since approximately December of 1995.

3. I joined Wizards in December 1995 in the French office as a Marketing Manager. In September 1999, I relocated to Wizards’ European headquarters in Antwerp, Belgium as European Marketing Manager. In 2004, I took over the position of European Category Marketing Manager. I then relocated to Seattle, Washington in October 2007, where I continued to work for Wizards.

4. From approximately October of 2007 to September of 2009, I was employed by Wizards as a Senior Marketing Manager. In September of 2009 I was promoted to Senior Manager of Organized Play Programs, and held that title until September of 2010. I was promoted in September of 2010 to Director of Organized Play Programs and Operations, and I was promoted again in October of 2011 to Director of Organized Play and Trade Marketing. I held the title of Director of Organized Play Programs and Operations until 2013 when my title changed to Director of Global Organized Play.

5. I am highly familiar with the “Magic: The Gathering®” trading card game and trading cards (“*Magic*”). *Magic* is a trading card game designed for players ages 13 and up, which is set in a fantasy world of powerful Wizards who have the ability to teleport between planes of existence. Though the game is quite complex, the premise of *Magic* is simple: build a deck of 60 Magic cards and defeat your opponent by bringing his life total from 20 points to zero.

Organized Play

6. While enjoyed casually at home or at game/hobby stores, *Magic* enthusiasts can choose to play in organized events and tournaments held in stores or other public venues across the United States and internationally. The events and tournaments are commonly referred to as organized play (“Organized Play”).

7. As the Director of Global Organized Play, my job duties include, among others: global business planning of Organized Play programs for *Magic*; marketing and promotion of Organized Play to *Magic* players; and business management of Organized Play. Accordingly, I am highly knowledgeable and experienced with respect to Organized Play of *Magic*.

8. Organized Play provides a wide range of options for *Magic* players of all skill levels to come together and play and enjoy *Magic* in an organized way, whether it is small local gatherings of players who just want to play against others who love the game, or large-scale multi-day tournaments with players of all skill levels, including those who take their passion for *Magic* to the competitive stage.

9. Organized Play *Magic* events are run at different rule enforcement levels (REL), which refers to the level of application of the *Magic* rules. There are three REL levels: Regular, Competitive or Professional REL.

Judges at *Magic* Tournaments and Events

10. Organized Play events may feature a rules arbitrator (a “Judge”). Through my experience, Judges tend to be highly engaged members of the *Magic* gaming community and active players of *Magic* who understand *Magic*’s nuanced rules, and elect to participate in the game not only as players but also as judges. Depending on the event organizer and event type, an individual may act as both a player and Judge in the same event. In addition, it is extremely common for retail store owners and tournament organizers, as well as direct-hire employees of retail stores and tournament organizers, to be certified as Judges and serve as Judges in events run by the respective stores and/or tournament organizers.

1 through the Wizards Play Network (WPN), announce the event ahead of time,
2 comply with the Magic Tournament Rules available on the WPN, and report the
3 results to DCI at the conclusion of the event through the Wizards Event Reporter
4 (WER). The WER is a downloadable program used by tournament organizers and
5 WPN retail locations to schedule, run, and report *Magic* events.

6 16. Some examples of sanctioned events include: Friday Night Magic;
7 Prereleases; Grand Prix Trials; Grand Prix; Nationals; Preliminary Pro Tour
8 Qualifier, Regional Pro Tour Qualifier, Pro Tour, World Championship, and World
9 Magic Cup, among others. To briefly describe these events:

10 a. **Friday Night Magic** is a weekly social gathering of *Magic*
11 enthusiasts held in thousands of stores across the globe each Friday night.

12 b. **Prereleases** are generally held at local stores with the arrival of
13 each major *Magic* release. These events allow players to see and play with the
14 newest cards before the set is officially released.

15 c. **Grand Prix** are three-day events, held all around the globe,
16 which feature a wide array of side events, card dealers, artists, and a two-day main
17 event with prize money on the line and potential for an invitation to the Pro Tour.

18 d. **Grand Prix Trials** are held at local stores and provide an
19 opportunity for players to earn a two-round bye at the associated Grand Prix.

20 e. **Nationals** provides an opportunity for each nation's best *Magic*
21 players to compete against one another in one big tournament, with the finalists
22 earning an invitation to the World Magic Cup.

23 f. **Pro Tours** are invitation-only events where the greatest *Magic*
24 players around the globe compete. Players can currently earn their way into a Pro
25 Tour by Being a top finisher at a Regional Pro Tour Qualifier, winning a Magic
26 Online Championship Series event, being a top finisher of a Grand Prix, having the
27 appropriate Pro Players Club status, finishing with 33 match points or greater at the
28 previously held Pro Tour, or being a member of the Pro Tour Hall of Fame.

1 g. **Preliminary Pro Tour Qualifier**, referred to by *Magic* players
2 as PPTQs, are the first step for players on their path to the Pro Tour.

3 h. **Regional Pro Tour Qualifiers** (RPTQs) provide top finishers
4 with an invitation (and airfare) to the Pro Tour that it qualifies for

5 i. **World Championship** is an exclusive tournament that pits
6 twenty-four of the world's great *Magic* professionals against each other to see who
7 will win the biggest title *Magic* has to offer each year.

8 j. **World Magic Cup** is an annual *Magic* event, gathering
9 representatives from nations all over the world to compete in a unique team format.
10 Teams of three, representing more than 70 countries worldwide, face off every year
11 over a multi-day, multi-format event to crown the World Magic Cup Champion.

12 17. The vast majority of Organized Play events are run by local retail
13 stores and independent tournament organizers without oversight or involvement by
14 Wizards. The only exception is the Magic Online Championship, the Magic Pro
15 Tour, the World Magic Cup, and the Magic World Championship, all of which are
16 run by Wizards.

17 18. Through the period of October 29, 2011 to the present, Wizards has
18 contracted with a number of different tournament organizers through the United
19 States to run competitive sanctioned events. The scope of the relationship between
20 the tournament organizer and Wizards is set forth through a written agreement
21 wherein, among other terms, the tournament organizer agrees to comply with all
22 applicable state and local laws. Through my experience, including personally
23 attending many of these tournaments, tournament organizers vary in how the
24 manage, staff, and run events, and also vary in how they engage Judges.

25 19. For the Magic Pro Tour, the World Magic Cup, and the Magic World
26 Championship, Wizards runs all aspects of the tournament. This includes, among
27 other things, engaging individuals as Judges from the U.S. and across the globe to
28 act as rules arbitrators. More specifically, Wizards enters into written independent

1 contractor agreements and financially compensates the Judges that are engaged to
2 assist with these events. The independent contractor agreements cover the entire
3 scope and terms of the relationship between Wizards and the Judges.

4 20. Aside from the Magic Online Championship, the Magic Pro Tour, the
5 World Magic Cup, and the Magic World Championship, Wizards' involvement in
6 sanctioned *Magic* events is generally limited to providing promotional items and/or
7 prizes—the specifics of which have changed over time and depend on the event and
8 other factors. The promotional items and/or prizes can be used and distributed by
9 the store/tournament organizer that is holding the sanctioned events. For such
10 events, it is the store/tournament organizer that determines, among other things,
11 whether to run an event, the date and location of the event, staffing for the event,
12 the number of entrants permitted, the length of the event including any breaks in
13 game play, and whether to charge players an entry fee and, if so, the price.

14 21. The vast majority of sanctioned events, such as Friday Night Magic,
15 Prereleases, and all casual events, do not require a Judge. Nevertheless, retail stores
16 and tournament organizers can, and in my experience do, utilize a Judge (sometimes
17 a store owner or employee of the store or tournament organizer) for such events at
18 their own discretion.

19 22. Stores and tournament organizers running specific sanctioned
20 competitive level REL *Magic* events agree to utilize a certified Judge or Judges as
21 a condition of holding the sanctioned event. This is and has been limited to Grand
22 Prix Trials and World Magic Cup Qualifiers (which are no longer being scheduled),
23 Preliminary Pro Tour Qualifiers, Regional Pro Tour Qualifiers, and Grand Prix.

24 23. The store or tournament organizer running these specific competitive
25 level REL sanctioned events are and have been responsible for selecting/engaging
26 the Judge(s), and complying with applicable laws with respect to the event. The
27 only exception has been Grand Prix held on or before December 31, 2016, where
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1 the contractual agreement entered into between Wizards and the tournament
2 organizer delegated the selection/engagement of the head Judge(s) to Wizards.

3 24. For all Grand Prix held between October 29, 2011 and December 31,
4 2016, Wizards entered into written independent contractor agreements and
5 financially compensated the head Judge(s) that it selected. For Grand Prix events
6 held on or after January 1, 2017, the tournament organizer is responsible for the
7 selection and all other aspects pertaining to the Judges it may utilize for the event.

8 25. In addition to sanctioned events, there are thousands of unsanctioned
9 *Magic* events and tournaments that take place throughout the United States and
10 internationally each year. I know this based on my position with Wizards and my
11 experience with *Magic*. Unsanctioned events are not scheduled or reported through
12 WER, and do not require a Judge.

13 26. There are significant differences among the various *Magic* event types
14 and thousands of events held throughout the United States each year. Events can
15 range from a night event involving a few players at a local game store such as Friday
16 Night Magic, to a multi-day Grand Prix involving thousands of players at a large
17 public venue. Events such as a Grand Prix also involve various side events (i.e.
18 smaller tournaments of varying types in addition to the main event). For each of
19 those events, there are substantial variations in how the events are organized,
20 managed, and run, including the selection and utilization of Judges.

21 27. There is substantial variation in the relationship between stores and
22 tournament organizers, on the one hand, and the Judges that they may select and
23 utilize for their respective events. The individual serving as a Judge in an event can,
24 for example, be the store owner himself/herself, an hourly paid employee of the
25 store owner that acts as Judge while overseeing the retail operations and event, a
26 player that happens to be a certified Judge and performs both roles while playing
27 in the event, an employee of a tournament organizer that serves as part of the core
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1 team in the operations of the event, an individual that is engaged by the store or
2 tournament organizer for the sole purpose of acting as a Judge in the event.

3 28. Since approximately 2012, Judge Apps, has been used by *Magic*
4 tournament organizers as the system for selecting/engaging Judges for large *Magic*
5 tournaments and other events. More specifically, tournament organizers can publish
6 an event they are running on Judge Apps, including event details and what the
7 tournament organizer is offering for compensation and/or travel expenses, and
8 individuals that want to be considered to Judge the event can then contact the
9 tournament organizer via Judge Apps and express interest. Wizards does not direct
10 or require individual Judges to apply for specific events.

11 29. Additionally, Judge Apps is the central repository for information
12 pertaining to the Judge community including, without limitation, blogs created and
13 published by Judges, chat rooms, forums, card rulings, codes of conducts, judge
14 related policies and other documents. Wizards does not control, own, financially
15 support or otherwise direct Judge Apps. Judge Apps is owned and run by Judges
16 and hosted on a third-party website, magicjudges.org. In fact, on approximately
17 December 22, 2015, the Judge(s) running magicjudges.org suspended the website
18 (including Judge Apps) and replaced it with a protest message. This was done in
19 protest when Wizards suspended the DCI player numbers of certain individuals
20 following the leak of cards from an unreleased *Magic* set.

21 **Regional Coordinators**

22 30. Throughout the period of October 29, 2011 through the present,
23 individuals to serve as Regional Coordinators (RCs).

24 31. While the role has varied over time, and is performed differently
25 depending on the specific RC, the RC is generally charged with covering a
26 specifically delineated region. Within that region, the RCs may coordinate Judges,
27 assist retail stores and/or tournament organizers with staffing events, and overall
28 serve as a bridge between Judges, event organizers, and players.

1 32. Since 2014, RCs are engaged by Wizards as independent contractors,
2 enter into written independent contractor agreements, and receive compensation for
3 their service.

4 **The Judge Code**

5 33. In approximately December of 2014, a group of Judges came up with
6 a document titled the Magic Judge Code, which describes the guidelines and rules
7 for how Judges are expected to behave within the *Magic* community. It also outlines
8 the possible consequences if the code is violated.

9 34. The Magic Judge Code is currently hosted on magicjudges.org, which
10 is a third-party website run by *Magic* Judges. To my knowledge, Wizards was not
11 involved in the drafting of the original Magic Judge Code, or any of its revisions.

12 **Judge Conduct Committee**

13 35. Also in approximately December of 2014, a group of *Magic* judges
14 formed what is referred to as the Judge Conduct Committee (JCC). It is my
15 understanding that the JCC exists to decide when a judge's conduct is a problem
16 and how that misconduct should be resolved from the Judge program's perspective.

17 36. Through my position and experience at Wizards, I have knowledge
18 that the JCC has made decisions regarding the status the Magic judges, such as
19 warning letters, probation, suspensions, and decertification of Judge status.

20 37. To my knowledge, Wizards was not involved in the formation of the
21 JCC, nor in its operations. Wizards does not select the members of the JCC.

22 38. Wizards can decide under what circumstances to suspend a *Magic*
23 player's DCI number, as well as the length of the suspension, based on the player's
24 acceptance of Wizards' player code of conduct. If a player that is suspended by
25 Wizards also happens to be a Judge, it is my understanding that the JCC's practice
26 is to suspend an individual from Judge-related activity. While Wizards can and does
27 make player-related decisions, the decision of whether to suspend an individual as
28 a certified Judge is entirely within the purview of the JCC.

1 I declare under penalty of perjury under the laws of the state of California
2 and the United States of America that the foregoing is true and correct.

3 Executed on May 4 2017, at Renton, Washington.

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6 Hélène BERGEOT
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PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of FISHER & PHILLIPS LLP and my business address is 444 S. Flower Street, Suite 1500, Los Angeles, CA 90071.

On **June 28, 2017**, I served the foregoing document entitled **DECLARATION OF HELENE BERGEOT IN SUPPORT OF WIZARDS OF THE COAST LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED MAILING LIST

☐ **[by MAIL]** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SUBMISSION]** - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☐ **[by FEDERAL EXPRESS]** I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☒ **FEDERAL** - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **June 28, 2017** at Los Angeles, California.

MARVIN JOHNSON

Print Name

By: /s/ Marvin Johnson

Signature

MAILING LIST

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CERTIFICATE OF SERVICE